

1 Lawrence K. Engel
2 Attorney at Law
3 40 Lake Bellevue #100
4 Bellevue, WA 98005
5 (425) 454-5500

Hon. Marc L. Barreca
Chapter 11

6 **UNITED STATES BANKRUPTCY COURT**
7 **FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

8 In Re
9 TONY THANH-CONG TRAN

Case No. 14-15003-MLB

10 Debtors.

DEBTORS' IN-POSSESSION'S OBJECTION
TO MAY'S EX PARTE MOTION AND
ORDER AUTHORIZING PROPERTY
INSPECTION [ECF Docket Nos. 66 and 69]

14 COMES NOW the Debtors-in-Possession, Sam Adams and Erika Adams (hereafter
15 referred to as "the Debtors") by and through their counsel for record, Lawrence K. Engel, and
16 Objects to the May's Ex Parte Motion and Order Authorizing Property Inspection [ECF Docket
17 Nos. 66 and 69] on the following basis:

18 1. This matter is not an ex parte matter under Local Rule 9013-1 (g) and therefore
19 should be denied on an ex parte basis, without prejudice to noting the matter with Notice, as all
20 contested matters.

21 2. Local Rule 9013-1 (g) reads:

22
23 " (1) Contents of Motion. Every ex parte motion, except those for routine administrative
24 orders, shall (A) allege specific facts forming the basis of the request, (B) cite the statute
25 or rule authorizing the court to act, and (C) **state specific reasons why the court should**
26 **proceed without notice or a hearing.** If the motion arises in an adversary proceeding or
27 a contested matter as defined in Fed. R. Bankr. P. 9014, the moving party shall, in
28 addition, describe (D) what immediate and irreparable injury, loss or damage will result
29 to the movant before the adverse party or his attorney can be heard in opposition; and (E)
30 the efforts, if any, which have been made to give notice to the adverse party and his
attorney.

DEBTORS' IN-POSSESSION'S OBJECTION TO
MAY'S EX PARTE MOTION AND ORDER
AUTHORIZING PROPERTY INSPECTION [ECF
Docket Nos. 66 and 69] - 1

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1 (2) Ex Parte Orders. A proposed ex parte order shall contain the words "ex parte" in its
2 title.

3 The Ex Parte Motion [ECF Docket No. 66] fails to state reasons why the relief should be granted
4 on an ex parte basis, and therefore should be denied.

5 3. The Mays have misrepresented the nature of an inspection. At all times materials
6 hereto the Debtors have been willing to allow the Mays, in their capacity as landlords, to inspect
7 the property. However, the Mays want to have an appraisal done. This fact is conspicuously
8 absent from the allegations in the Motion and the supporting Declaration of Lisa May. She only
9 states that Robert Chamberlin is a "designated representative." This is a misrepresentation by
10 omission, and is disingenuous and demonstrates lack of candor with the Court. Mr. Rizzardi has
11 represented that Mr. Chamberlin is an appraiser in e-mail correspondence:

12 "My client, Rodger May, knows nothing about why Derrick went to the home. My client
13 was told by Derrick, after the fact, that Sam asked him to visit. It was not an inspection
14 done at our request. In all likelihood, Sam thought he was trying to "help" Rodger May by
15 inviting Derrick over, however, it was not an inspection that we contracted. I would still
16 want my appraiser to visit on August 8. Please ask Sam if he initiated the inspection
17 request." [E-mail from John Rizzardi to Lawrence Engel dated July 18, 2014].

18 _____
19 "Bob Chamberlin, appraiser, can only inspect on August 8 of the two choices you provided." [E-
20 mail from John Rizzardi to Lawrence Engel dated July 18, 2014.]

21 Inspections by professionals such as Appraisers, should be authorized under B.R. 7035 which
22 incorporates the F.R.Civ.P. 34 (inspections, which are incorporated into the Bankruptcy Rules
23 and Contested matters by B.R. 9014 (c). As such, the proposed inspection has nothing to do with
24 the Landlord/Tenant Act—it is a litigation tactic or maneuver that was not properly disclosed to
25 the Court.

26 4. The Mays, through their legal counsel, are well aware that the Debtors have not
27 consented to an inspection by an appraiser. They have agreed to have the Mays come and
28 perform and inspection, in their capacity as Landlords.
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1 WHEREFORE the Debtors' respectfully request that their Objection be sustained and
2 that the relief requested not be granted on an *ex parte* basis, for good cause shown.

3 DATED: August 12, 2014.

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5 /s/ Lawrence K. Engel
6 LAWRENCE K. ENGEL, WSBA #8421
7 Counsel for Debtors-in-Possession Sam Adams et. ux.
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